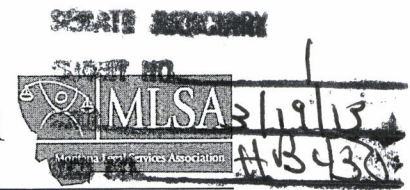


Montana Legal Services Association

Provide, protect and enhance access to justice.



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MEMO

To: Senate Judiciary Committee
From: Amy Hall, attorney with MLSA *RA*
RE: HB 438 – revising representation of parties in landlord-tenant actions
in justice court
Primary sponsor: N. Ballance
Date: March 19, 2013

Good morning, Mr. Chairman and members of the Committee:

My name is Amy Hall. I am an attorney with Montana Legal Services Association, a nonprofit organization that provides civil legal assistance to Montanans in poverty. I have provided legal representation to low-income tenants in Montana for more than seven years.

I am here on behalf of MLSA to express concerns about HB 438. This bill, if passed, would affect many of the Montanans who request assistance from MLSA concerning rental disputes. This bill would amend Section 70-24-401, MCA, so that a business-entity landlord, such as an LLC or a corporation, could file suit through a property manager or other representative.

Current Montana law requires a corporation or other business entity that files an action for possession (an eviction lawsuit) to file through an attorney. Rule 2(a) of the Montana Rules of Justice and City Court Rules of Civil Procedure provides that an individual may file an action in court individually or through an attorney. Rule 2(a) provides that all others -- including corporations, business trusts, estates, partnerships, or limited liability companies -- must file through an attorney. This has been the law in Montana for many years.

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The Montana Supreme Court has repeatedly held that a business entity cannot appear on its own behalf in court in landlord-tenant actions or in any other civil court actions, and must appear through an attorney:

- From *H&H Development, Inc. v. Ramlow*, 2012 MT 51, ¶ 18, 364 Mont. 283:
“Montana law generally does not permit a corporation to file an action *pro se*. A corporation ‘cannot appear on its own behalf through an agent other than an attorney.’ *Contl. Realty, Inc. v. Gerry*, 251 Mont. 150, 152, 822 P.2d 1083, 1084 (1991). Non-lawyers who attempt to represent corporations or partnerships in court are guilty of contempt of court. *Zempel v. Liberty*, 2006 MT 220, ¶ 18, 333 Mont. 417, 143 P.3d 123; § 37-61-210, MCA. Our references to corporations in this opinion apply with equal force to partnerships, limited liability companies, and similar entities.”
- From *Weaver v. Graybill*, 246 Mont. 175, 178, 803 P.2d 1089 (1990):
“While, as Weaver contends, shareholders and directors of a corporation have the right to ‘take action’ on the corporation's behalf under § 35-1-930, MCA, that does not entitle those persons to practice law on behalf of the corporation. A corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. Annotation, *Propriety and Effect of Corporation's Appearance Pro Se, Through Agent Who Is Not Attorney*, 19 A.L.R.3d 1073 (1968). Therefore, Weaver cannot represent Weaver-Maxwell, Inc., or Weaver-Maxwell Havre, Inc. Weaver cannot appear on behalf of his wife or the Maxwells, either, without being guilty of contempt of court. Section 37-61-210, MCA.”

Conclusion

The passage of HB 438 would have detrimental effects on Montana tenants, because business-entity landlords would be able to appear in court as if they were individuals. In November 2012, Montana voters overwhelmingly approved Ballot Initiative No. 166, which established a state policy that corporations are not human beings and are not entitled to constitutional rights. I-166 also charged Montana's elected officials with implementing a policy that corporations are not human beings. If passed, HB 438 would conflict with Montanans' intent as expressed by I-166, and would require the rejection of long-standing precedent of the Montana

Supreme Court, and the repeal of Rule 2 of the Montana Justice and City Court Rules of Civil Procedure.

Thank you for your consideration.